ORDINANCE NO. 22-1156

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AN ORDINANCE OF THE MAYOR AND COUNCIL OF CITY OF DOUGLAS, COCHISE ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE CITY OF DOUGLAS, ARIZONA AND THE WATER INFRASTRUCTURE AUTHORITY OF ARIZONA (WIFA) EVIDENCING A LOAN FROM WIFA TO THE CITY IN AN AMOUNT NOT TO EXCEED \$2,100,000 FOR DESIGN AND CONSTRUCTION OF A NEW WELL #18; **AUTHORIZING** AND DIRECTING THE CITY MANAGER TO EXECUTE AND DELIVER ALL DOCUMENTS RELATING TO THE LOAN; PLEDGING WATER SYSTEM REVENUE FEES FOR PAYMENT OF THE LOAN; ESTABLISHING SEVERABILITY OF COMPONENTS OF ORDINANCE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Douglas furnishes potable water to the residents of Douglas and surrounding areas; and

WHEREAS, the Water Division is in need of constructing a new well (Well #18) in order to meet water demand and replace aging wells and infrastructure; and

WHEREAS, the Water Infrastructure Finance Authority of Arizona ("WIFA") has offered a new loan to the City of Douglas in the amount not to exceed \$2,100,000 to cover costs that include planning, design and engineering, financial services, and construction/installation of all pertinent equipment and infrastructure; and

WHEREAS, the City desires to enter into a new loan agreement (DW 920356-23) in the amount of \$2,100,000 with WIFA in order to cover costs that include planning, design and engineering, financial services, and construction/installation of all pertinent equipment and infrastructure; and

WHEREAS, the City desires to pay the WIFA Loan solely from the net revenues of the Drinking Water System; and

WHEREAS, by this Ordinance, the Mayor and Council of the City of Douglas will authorize the WIFA Loan and the execution and delivery of the WIFA Loan Agreement; and

WHEREAS, the WIFA Loan, which is partially forgivable, will be secured by a pledge of the net revenues of the Drinking Water System as stated in the WIFA Loan Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Douglas, Arizona, that:

Section 1. The WIFA Loan Agreement (DW 920356-23) between the City and WIFA, substantially in the form attached hereto and marked Exhibit A, is approved, and the City Manager is ordered and directed to complete, execute and deliver the WIFA Loan Agreement in substantially the form attached hereto with such insertions, deletions, modifications and changes as the City Manager in her sole and exclusive discretion believes in the best interest of the City, and the City Clerk is authorized and directed to attest the City Manager's signature thereon and to cause the same to be delivered to WIFA. The total amount that the City may borrow pursuant to the DW 920356-23 WIFA Loan Agreement shall not exceed \$2,100,000. The WIFA Direct Debit Agreement/Loan Repayment Schedule in substantially the form set forth as part of Exhibit A of the Loan Agreement is approved and authorized for use by WIFA and the City to aid in the administration of the DW 920356-23 WIFA Loan Agreement.

Section 2. To secure the payment of the DW 920356-23 WIFA Loan Agreement, the City hereby pledges all its net revenues of the Drinking Water System (the "Net Revenues") as more particularly stated in Exhibit A. This pledge shall be a first lien upon such amounts of the Net Revenues sufficient to make all Loan Repayments (as defined in the DW 920356-23 WIFA Loan Agreement), and the City agrees and covenants to make said payments from said Net Revenues, except to the extent it is permitted to and chooses to make such payments from other funds. The City is and shall be absolutely and unconditionally obligated to pay all Loan Repayments from Net Revenues.

In addition, the City agrees not to hereafter grant any lien or pledge of or upon the Net Revenues superior to the lien on the Net Revenues created by this Ordinance and the DW 920356-23 WIFA Loan Agreement. This pledge shall be a first lien upon all the net revenues sufficient to make the payments pursuant thereto.

The DW 920356-23 WIFA Loan Agreement will not constitute an obligation of the city for which the City is obligated to levy or pledge any form of ad valorem taxation nor does the DW 920356-23 WIFA Loan Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise.

Section 3. After the DW 920356-23 WIFA Loan Agreement is executed and delivered by the City, this Ordinance shall be and remain in effect until the principal and interest thereon shall have been fully paid, cancelled and discharged.

Section 4. The City Manager is hereby ordered and directed to sign all certificates, make all representations, and do all things necessary to carry out the execution and delivery of the DW 920356-23 WIFA Loan Agreement and all documents, certificates, contracts, exhibits and other matter necessary for the full execution, delivery and consummation of the DW 920356-23 WIFA Loan Agreement.

<u>Section 5</u>. All officers, agents, attorneys, and employees of the City are hereby ordered and directed to take all acts and do all things necessary to consummate the DW 920356-23 WIFA Loan Agreement.

Section 6. Severability. If any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

<u>Section 7.</u> Be it further ordained that the immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect immediately after its passage and adoption.

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1	PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 14th day of December 2022.	
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3		Mmsh
4		Donald C. Huish, Mayor
5	Attest:	Approved as to form:
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7		J.M. Think
8	Alma Andrade, City Clerk	Denis M. Fitzgibbons, City Attorney
9	Prepared by: Denis Fitzgibbons, City Attorney	
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